IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Mat.Appeal.No. 352 of 2007()

OP.84/2006 of FAMILY COURT, PALAKKAD
.....

PETITIONER: RESPONDENT

SOBHANA, D/O.RAMAKRISHNA GUPTAN,
THOTTINGAL KOLASSERY VEEDU,
PULAPPATTA AMSOM DESOM, OTTAPPALAM TALUK.

BY ADV. SRI.A.R.GANGADAS
SRI.K.R.RAJKUMAR

RESPONDENTS: PETITIONER

RAMAKRISHNAN, S/O.RAMAGUPTAN,
MANGALATHU VEEDU, ELAMBULASSERI AMSOM
DESOM, OTTAPPALAM TALUK.

BY

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

Mat.Appeal.No.352 OF 2007

Dated 25th July, 2007

JUDGMENT

Koshy,J.

Appellant challenges the order of the Family Court dissolving the marriage on the ground of desertion and cruelty on her part. Her husband filed the petition alleging that marriage was solemnised on 20.5.90. By that time, the petitioner was employed in Electrical and Mechanical Engineering Wing of Indian Army. After the marriage the petitioner took the appellant to his place of employment. During 1991 he was transferred to Assam. At that time, family accommodation was not available there and the appellant returned to her house. Thereafter, the appellant was behaving in an indecent manner towards the petitioner. During May, 1991 when the petitioner returned to his native place on leave, he requested the appellant to accompany him to his house. That was not accepted as she was not willing to reside with him. According to the petitioner, the appellant was acting detrimental to the interest of the family members of the petitioner. Mediators intervened and there was resumption of cohabitation for a short period. But, the appellant deserted the petitioner and without any reasonable cause went back to her house. During September, 1992, mother of the petitioner was seriously ill and admitted in the hospital. During that time, she deserted the petitioner and from

September, 1992 onwards desertion was complete. She has also sent complaints to superiors of the Army against the petitioner. She filed O.S.No.152/97 before the Munsiff Court, Ottappalam. In that case, there was a finding that she was residing separately without any justification. No appeal has been filled. In the application filed for maintenance, the matter was compromised by which petitioner agreed to pay Rs.375/= per month. Considering the above and on the basis of the evidence adduced, family court found that there is desertion and cruelty on the part of the appellant. According to the averments of the appellant, husband was cruel. In any event, it has come out in evidence that they were living apart for the last 15 years, one and a half decades, and we are of the opinion that the marriage is irretrievably broken. In this connection, we refer to the decision of the Apex Court in ***Naveen Kohli*** v. ***Neelu Kohli*** (AIR 2006 SC 1675). In the above circumstances, we are not inclined to admit the appeal as appellant and respondent were living separately for more than 15 years.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

tks